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Before the  
**Federal Communications Commission**  
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

)  
)  
*Amendment of Section 202(b),*  
*Table of Allotments,*  
*FM Broadcast Stations*  
*(Cordele, Hawkinsville &*  
*Montezuma, Swainsboro and*  
*East Dublin, Georgia)*  
)

MM Docket No. 99-199  
RM-9564

To: Chief, Allocations Branch )

**OPPOSITION TO MOTION TO STRIKE**

Metro Com Corp., licensee of Station WKKN(FM), Cordele, Georgia ("WKKN"), Broadcast Equities Corp, permittee of WEGF(FM), Montezuma, Georgia ("BEC"), Tri-County Broadcasting Company, licensee of Station WQSY(FM), Hawkinsville, Georgia ("WQSY"), and Multi-Service Corp., licensee of Station WPMX, Statesboro, Georgia ("Multi-Service"), by their attorney, hereby submit an Opposition to the "Motion to Strike Supplemental Comments" filed by Lacom Communications, Inc. ("Lacom"). With respect thereto, the following is stated:

WKKN, BEC, and WQSY filed Supplemental Comments in this proceeding, mirroring comments filed in another proceeding demonstrating a means by which service to all cites subject to this rulemaking proceeding will receive service and, in addition, a city of license change being considered in MM Docket No. 00-18 also will be able to be successfully implemented. WKKN, BEC, and WQSY specifically requested that the Supplemental Comments be accepted as representing a means by which this proceeding may be most expeditiously and equitably resolved. Lacom requests that the Supplemental Comments filed by WKKN, BEC, and WQSY be stricken, arguing predominantly that the comments are being filed beyond the comment period in this

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proceeding. Attached to the Motion is a copy of its “Reply Comments in Opposition to Comments and Counterproposal” (“Reply Comments”) filed in MM Docket No. 00-18.

Lacom’s request should be denied. The Supplemental Comments obviously could not be filed earlier in this proceeding, insofar as the proposal is only just now feasible as a result of the changes proposed in MM Docket No. 00-18. Therefore, it was appropriate that they be filed at this time and that they be considered. The situation here is similar to that presented in *Boalsburg, Clearfield, Duncansville, et al. PA*, 6 FCC Rcd 4296 (Allocations Branch 1991), where the Commission accepted “late-filed” Supplemental Comments, stating:

We find that the public interest would be served by acceptance of [the] supplemental comments since they provide information which assists us in resolving the proceeding. Further, the supplemental comments do not constitute an untimely counterproposal in that [the petitioner] does not introduce any new community to this proceeding or alter the configuration of the allotments to the various communities. Rather, it seeks to simplify the proceeding by allotting a different channel than it previously proposed ....

*Id.* at n.15. In that case, a “motion to strike” was also denied. *See also, Pinewood, SC*, 5 FCC Rcd 7609, ¶ 10 (1990) (in proposing substituted channel in order to resolve a proceeding “neither the source nor the timing of a specific channel substitution proposal affects the legitimacy of a channel substitution or the adequacy of the APA notice afforded by the underlying notice of proposed rule making that such a substitution could be made”).

The alleged “flaws” in the proposal are in fact nonexistent. The alleged “short-spacing” of WDMG with WMPX(FM) (Reply Comments at 2) does not in fact exist insofar as an element of the proposal is to change the city of license of WDMG(FM) from Channel 258C1, Douglas, Georgia to Channel 258C1, Willacoochee, Georgia. That modification, which has been consented to by the license (Attachment 1) eliminates the “short-spacing.”

As to a reimbursement pledge to Jumbo Thing, Inc., licensee of Station WDMG(FM)

(Reply Comments at 2-3), under Commission precedent, the pledge does not have to be included in an initial rulemaking proposal, but can be made in the course of Comments filed in support to a proposal. *See, e.g., Avalon, Fountain Valley, Adelanto, Ridgecrest and Riverside, CA*, 14 FCC Rcd 19397, ¶ 6 (Nov. 19, 1999).

Third, Lacom argues that the alternative channel (Channel 276C3) proposed for use by WELT should not be allotted absent a demonstration that a “suitable and available transmitting site” is located, citing *Anniston, AL*, 68 R.R.2d 1641 (1991). Reply Comments at 3-4. The *Anniston* case involved a case where the only fully-spaced sites that appeared to be available for a proposed allotment would provide only shadowed service to the proposed community of license, and that only one area, approximately .29 sq. miles in size, would provide adequate service. No such shadowing or restriction of such magnitude exists here. As such, the general proposition, that the Commission will not require a showing of the availability of an actual transmitter site in the allotment stage, should apply. *Amanosa and Ashbury, IA*, 12 FCC Rcd 20275 ¶ 6 (Allotments Branch 1997) (“at the allotment stage, we only require that a theoretical transmitter site exist from which a station can be operated in compliance with our rules. *See e.g. West Palm Beach, Florida*, 3 FCC Rcd 5810 (1988), *recon. denied*, 6 FCC Rcd 6975 (1991); *Stamping Ground, Kentucky*, 5 FCC Rcd 1772 (1990)”).

Lacom, in essence, is simply complaining that the proposal contemplates the granting of a different transmitter site than that from which it would prefer to operate. As the Commission, however, has stated:

[once a] petitioner has indicated [its] willingness to relocate [a station] should it be upgraded..., the imposition of a different transmitter site falls within the Commission's existing policy to impose a different site restriction to accommodate an allotment elsewhere. *See, Rockport, Gregory, Alice and Armstrong, Texas*, 4 FCC Rcd 8075 (1989) (permittee or licensee that seeks a higher class channel

which requires a new transmitter site cannot invoke policy against an involuntary transmitter site move if the move is needed to accommodate its request for an upgrade and a number of other mutually exclusive requests for upgrade).

*Indian Springs, NV, Mountain Pass, CA, et al.*, 14 FCC Rcd 10568, ¶ 14 (Allocations Branch 1999).

Finally, although Lacom complains that an area exists to which it currently provides service that will not receive service if the alternative channel is adopted (Opposition at 4), no showing is made that the area is underserved (*i.e.*, would be served by five or fewer services). In any event, that argument is not a grounds for “striking” or disregarding a proposal, but at best, is simply one factor to be considered in analyzing this proceeding and hypothetically choosing Channel 251C3 in lieu of Channel 276C3 at the decision-making stage.

The Commission always warns petitioners that the filing of a rulemaking petition for a channel “may lead the Commission to allot a different channel than was requested for any of the communities involved.” *See, e.g., Beverly Hills, Chiefland, Holiday, Micanopy, and Sarasota, FL*, FCC 00-38, ¶ 7 (Feb. 14, 2000). The Commission generally considers channels of the same class to be equivalent. Lacom’s fear that a possibility exists that it will not be able to utilize its preferred transmitter site is not a valid grounds for striking or disregarding the proposal contained in the Supplemental Comments.

By proposing that the channel of operation of WPMX be modified from Channel 257C3 in lieu of Channel 257C3, Channel 276C3 can be allotted to East Dublin in lieu of the Channel 251C3 proposed for East Dublin in MM Docket No. 99-199; Channel 236C3 can be substituted for Channel 252A at Cordele (allowing for the modification of Station WKKN’s license to specify the higher class channel); Channel 280C3 can be substituted for Channel 236A at Montezuma (allowing for the modification of the Station WEGF construction permit to specify the higher

class channel); Channel 252C3 can be substituted for Channel 280C3 at Hawkinsville (allowing for the modification of Station WQSY's license to specify the alternate Class C3, all as proposed in RM-9564); Channel 253A can be allotted to Soperton, Georgia, as that community's second aural service (as proposed in RM-9685); Channel 251A can be allotted to the community of Twin City; and Channel 258C1 can be moved from Douglas to Willahoochee, Georgia, as consented to by the licensee of Station WDMG.

Accordingly, Metro Com Corp., Broadcast Equities, Inc., and Tri-County Broadcasting Company respectfully request that the "Motion to Strike Supplemental Comments" be denied, and that the Supplemental Comments be accepted and considered in this proceeding, and that the FM Table of Allotments be modified in the manner specified therein.

Respectfully submitted,

**TRI-COUNTY BROADCASTING  
COMPANY**

**METRO COM CORP.**

**BROADCAST EQUITIES CORP.**

By: 

Dan J. Alpert

Their Attorney

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April 20, 2000

***ATTACHMENT 1***

exhibit 1:

April 23, 1999

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: RM- Barnwell, South Carolina, etc.

Dear Ms. Salas

Jumbo Thing Incorporated, licensee of FM broadcast station WDMG-FM, Douglas, Georgia, hereby consents to the proposal, made in the above-referenced Petition for Rulemaking by Bullie Broadcasting Corporation, to change the City Of License of, and transmitting coordinates of WDMG-FM. Jumbo Thing Incorporated also supports Bullie's proposed Rule Making Change for WRAW-FM, Barnwell, South Carolina from 256C3, Barnwell, South Carolina to 257C1, ~~Ludowici~~, Georgia.

**HAGAN**

Sincerely,

By 

President, Jumbo Thing Incorporated.

**CERTIFICATE OF SERVICE**

I, Dan J. Alpert, hereby certify that on April 20, 2000 the foregoing document is being served by First Class Mail, postage prepaid, to the following persons:

Christopher D. Imlay, Esq.  
Booth Freret Imlay & Tepper, P.C.  
5101 Wisconsin Ave., N.W.  
Suite 307  
Washington, DC 20016



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Dan J. Alpert